IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13087 of 2004

Between:

1 B.R.V. Prasad Rao S/o late B. Narayana Rao
HIG 73, HIG Phase II, KPHB Colony, Hyderabad
2 K. KEsava Rao S/o late K. Janardhan Rao
H. NO. S2-C-166, Sachivalaya Nagar, Hyderabad
3 V. Ramakrishna Murthy S/o Late V. Venkata Rao
H. NO. 6-3-342, Sachivalayanagar, Hyderabad
4 M. Satish, S/o Late M. Chandramouliswara Rao,
H. No. MC-351, Malakpet Colony, Hyderabad

....PETITIONER(S)

AND

1 Government of Andhra Pradesh, Housing (CH) Department,

Secretariat, rep by Special Chief Secretary to Government,

Hyderabad
2 The Commissioner for Cooperation & Registrar of Coop.

Societies, AP Gruhakalpa Buildings, Nampally, Hyderabad.
3 The District Collector, Ranga Reddy District at Hyderabad.
4 Joint Registrar/Dist Coop. Officer Ranga Reddy District,

A.P. Housing Board Complex, Nampally Station Road,

Hyderabad
5 Deputy Registrar/Divisional Coop. Officer,

Hyderabad East Division, Ranga Reddy District at Hyderabad.
6 A.P. Secretariat Employees Coop. House Building

Society Ltd., R.No. TBC 186, rep by PIC,

Designate/Sub-Divisional Coop Officer,

Ibrahim Patnam, O/o The Divl Coop Officer Hyderabad,
(East) Division, Ranga Reddy District at Hyderabad.

..RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly in the nature of Writ of Mandamus declaring the orders dt.22-6-2004 of the 5th respondent herein i.e. Deputy Registrar/Divisional Cooperative Officer, Hyderabad (East Division), Ranga Reddy District at Hyderabad, as without jurisdiction, arbitrary malafide, without application of independent mind, illegal, violative of the provisions of Section 32 (7) (a) of the A.P. Cooperative Societies Act 7 of 1964 besides being violative of the cardinal principles of natural justice and hence set-aside and consequently appoint the erstwhile PIC committee as PIC Committee U/s. 32(7)(a)of the Act to mange the affairs of the AP Secretariat Employees Cooperative House Building Society Ltd., TBC No. 186, Hyderabad.

Counsel for the Petitioners : MR.D.V.BHADRAM

Counsel for the Respondents : GP FOR COOPERATION

The Court made the following :

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O R D E R :

Petitioners 1 to 4 herein were members of the Executive Committee of sixth respondent society. After the term of elected body expired, the petitioners were appointed as members of the Person In-charge Committee (PIC Committee). The first petitioner is the Chairman and petitioners 3 and 4 are the members of the PIC Committee and the second petitioner is the member of the sixth respondent society. Aggrieved by the proceedings of the fifth respondent in Rc.No.2612/2002 H, dated 22-6-2004, petitioners filed the present writ petition. By the impugned order, the fifth respondent appointed Sri M.Prasad Rao, Sub-Divisional Cooperative Officer, Ibrahimpatnam, as Person In-charge for a period of three months from the date of assumption of the charge or till the date of elections to the society are held, whichever is earlier. Be it also noted that the impugned proceedings was issued in exercise of powers under Section 32 (7) (a) of the Andhra Pradesh Cooperative Societies Act,1964 ('the Act' for brevity).

The learned counsel for the petitioners contends that Sri M.Prasad Rao is holding a focal post of Sub-Divisional Cooperative Officer besides holding the office of Person In-charge of three other societies. Therefore, he is appointed only as a part-time Person In-charge, which is not contemplated under Section 32 (7) (a) of the Act. Secondly, it is urged that the ground for appointing an official as Person In-

charge are not germane to exercise the power under relevant provisions of the Act. According to the petitioners, as per the spirit with which the Cooperative Societies Act was enacted, even when the elections cannot be held immediately for various reasons, the members of outgoing managing committee alone should be appointed as PIC Committee, if there are no allegations against them. The learned counsel also placed reliance on various judgments.

Learned Government Pleader for Cooperation submits that a Department official is appointed as Person In-charge pending elections, that effective steps are being taken to hold elections within a period of four months, and that no prejudice would be caused to the petitioners if an official is appointed as PIC. He further urged that as per the provisions of Section 32 (7) (a) of the Act, the outgoing members of managing committee have no right for being appointed or being considered as members of the PIC Committee, and therefore, this writ petition for enforcement of a non-existing right is not maintainable. Strong reliance is placed on the judgment of a Division Bench of this Court to which I was a member in **Elakolanu Primary Agricultural Co-op. Credit Society Ltd. v. Govt. of A.P.**

The Division Bench considered Section 32 (7) of the Act and laid down as under:

A bare perusal of the aforementioned provision would clearly show that even assuming that the appellants herein do not stand disqualified, the same by itself cannot be a ground for their appointment as persons-in-charge. A writ in the nature of *mandamus* can be issued provided the writ petitioner establishes the existence of a legal right in himself and a corresponding legal duty in the respondent. Section 32(7) of the Act does not envisage that only the erstwhile members of the Co-operative Society would be appointed as persons-in-charge. Section 32(7) confers discretion upon the appropriate authority to appoint persons-in-charge. It is not the case of the appellants that such a discretion has been arbitrarily exercised or is abused by the respondents herein. In such a situation, we are of the opinion that in the absence of the plea of malice-in-law, the Court shall not issue any directions which run contrary to the discretionary power conferred upon the appointing authority in terms of the aforementioned clause.

In the absence of any express provision in the statute, it cannot be said that the appellants had a legal right to be appointed as persons-in-charge even if it be assumed that they were not disqualified.

Therefore, in place of the elected members of the Committee of the sixth respondent society, if an official of the Department is appointed as Person-in-charge, the petitioners cannot have any grievance nor can they claim to be appointed as members of the Person In-charge Committee. Admittedly, the term of the elected members expired in 2001 and thereafter, petitioners 1, 3 and 4 are being continued as members of the PIC Committee for the last three years. Their term also expired by March 2004. Further it appears, members of the sixth respondent society levelled serious allegations against the PIC Committee by making a representation on 28-4-2004 and the same was enquired into by the Cooperative Sub-Registrar/Sub-Divisional Cooperative Officer, Ibrahimpatnam. The term of the PIC Committee expired on 5-3-2004 and there is no valid Committee to manage the affairs of the Committee. It is for that reason, the impugned order came to be passed.

After perusing the order and also the judgment of the Division Bench of this Court referred to hereinabove, I do not see any infirmity or illegality in the action of the fifth respondent in appointing Sri M.Prasad Rao as Person In-charge, especially having regard to the submission of the learned Government Pleader that elections are going to be held within a period of four months. Therefore, this Court is not inclined to interfere in the matter.

Learned Government Pleader, after obtaining instructions, submits that subject to the first respondent handing over all the records of the sixth respondent society, the elections will be conducted within a period of four months. Having regard to the said submission, this Court is of the considered opinion that it would be in the interest of justice to direct the Person In-charge to take necessary action for conducting of elections in accordance with Section 31 (2) (c) of the Act. The election process shall be completed within a period of four months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No costs.

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(V.V.S. RAO, J.)

Dt. 05-08-2004.

Msr.

NOTE : Office to dispatch a copy of this

order within one week.

B/o.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Special Chief Secretary to Government,

Housing (CH) Department, Govt.of A.P.,

Secretariat, Hyderabad.
2 The Commissioner for Cooperation & Registrar of Coop.

Societies, AP Gruhakalpa Buildings, Nampally, Hyderabad.
3 The District Collector, Ranga Reddy District at Hyderabad.
4 Joint Registrar/Dist Coop. Officer, Ranga Reddy District,

A.P. Housing Board Complex, Nampally Station Road,

Hyderabad
5 Deputy Registrar/Divisional Coop. Officer,

Hyderabad East Division, Ranga Reddy District at Hyderabad.

6. 2CCs to Government Pleader for Cooperation,

High Court of A.P., Hyderabad.(OUT)

7. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.13087 of 2004

Dt.05-08-2004.

(Msr)